

**COURT No.3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

RA 30/2022 IN OA 1102/2022

Union of India & Ors.	Applicants
VERSUS		
Sqn Ldr Yogesh Kumar Chaudhary	Respondent

For Applicants	:	Mr. Neeraj, Sr. CGSC
For Respondent	:	Mr. A.K. Aggarwal, Advocate

Dated : 15th November, 2022

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**HON'BLE MS JUSTICE ANJANA MISHRA, MEMBER (J)
HON'BLE LT GEN P.M. HARIZ, MEMBER (A)**

ORDER

RA 30/2022

The present Review Application has been filed under Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008 seeking review of the order dated 14th July, 2022, by which this Tribunal has directed the applicants (respondents in OA) to pay to the respondent (applicant in OA) an additional/enhanced pension with additional quantum at the rate of 20% with all consequential benefits from the first day of 80 years of the respondent, i.e., 22nd September, 2021 with arrears within a period of three months from the date of the receipt of a copy of the order, failing which the respondent shall be entitled to interest at the rate

of 6% on the amount due. The judgment at Para 8, which is quoted hereunder, had explained as follows:

8. Reverting to Annexures A-3 and A-4, Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare, New Delhi, extracts whereof find placed in this application, clearly state that the words at point 12 and 14 respectively ‘that from 80 years to less than 85 years’ twenty per cent of revised basic pension or family pension shall be given to the old pensioners. Annexure A-4 (Extracts) is quoted hereunder:

“The quantum of age-related pension/ family pension available to the old pensioners/ family pensioners shall continue to be as follows:

Additional Pension for Pensioners 80 years age and above. The quantum of additional pension/ family pension available to the old pensioners/ family pensioners shall be as follows:

<i>Age of Pensioner or Family pensioner</i>	<i>Additional quantum of pension or family Pensioner pension</i>
<i>From 80 years to less than 85 years</i>	<i>Twenty per cent. of revised basic pension or family pension</i>
<i>From 85 years to less than 90 years</i>	<i>Thirty per cent. of revised basic pension or family pension</i>
<i>From 90 years to less than 95 years</i>	<i>Forty per cent. of revised basic pension or family pension</i>
<i>From 95 years to less than 100 years</i>	<i>Fifty per cent. of revised basic pension or family pension</i>
<i>From 100 or more</i>	<i>Hundred per cent. of revised basic pension or family pension.</i>

2. This Tribunal while discussing the judgment of the Guwahati High Court in the matter of *Virendra Dutt Gyani*

Vs. Union of India and Ors. (Writ Petition No.4224/2016) dated 15th March, 2018 which was affirmed by the Hon'ble Supreme Court, allowed the OA and issued the following directions at Para 10 which reads as under:

“10. We accordingly allow this OA and set aside the impugned order. The respondents are directed to pay to the applicant the additional/enhanced pension with additional quantum at the rate of 20 per cent with all consequential benefits from the first day of 80 year of the applicant, i.e., 22 September, 2021 with arrears within a period of three months from the date of receipt of a copy of this order failing which the applicant shall be entitled to interest at the rate of six per cent on the amount due.”

3. The applicants, namely, the Union of India has now urged before us that vide its Gazette Notification dated 20th December, 2021 the Government has amended Section 17B of the High Court Judges (Salaries and Conditions of Service) Act, 1954 and the following explanation has been appended thereto, and thus in view of the Gazette Notification (Annexure-2) the judgment dated 14th July, 2022, is required to be reviewed.

4. The Gazette Notification (Annexure-2) appended to the Review Application reads as under:

“Explanation- for the removal of doubts, it is hereby clarified that any entitlement for additional quantum of pension shall be, and shall be deemed always to have been, from the first day of the month in which the pensioner or family pensioner completes the age specified in the first column of scale.”

It was thus, contended that from the amendments to Section 17B, it has now been clarified as under:

“F. That the first column of the scale is “From 80 years to less than 85 years” and reading it in the light of the amendment and its explanation above, the pensioner will get additional quantum of pension from the first day of the month when he completes the age specified in the first column i.e. from the first day of month after completion of 80 years.”

He thus, contended that the applicant in the OA, therefore, be entitled to additional-enhancement pension with additional quantum at the rate of 20% with all consequential benefits from the first day of month when he completed the age qualified in the first column, i.e., from the first day of month after completion of 80 years and not from the first day of the 80th year and as such the order of the Hon’ble Tribunal be reviewed and modified in the light of the reasons stated herein above.

5. We have heard learned counsel for the parties and find that the present Review Application is highly misconceived inasmuch as the scope of Review Application is limited to the

errors apparent on the face of the record and other provisions as contained in order XLVII sub-rule (1) and (2) of Rule 1 of the Code of Civil Procedure. The said provision of law is quoted hereunder for any reference:

“1. Application for review of judgment.-(1) Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.”

6. It is a settled principle of law that the power of review is available only when there is an error apparent on the face of the

record and not for any erroneous decision. It is also well settled principle that the Review Application cannot be allowed to be an appeal in disguise.

7. In our considered opinion, the applicants herein have not been able to make out a case for review on the ground that there is an error apparent on the face of the record. In a way they are seeking re-hearing of the matter on the basis of the Gazette Notification which holds good prospectively. So far as the, ground taken by the applicants that the explanation, as brought out in the Gazette Notification, will apply in the case of retired defence personnel also cannot be accepted for the simple reason that no such amendment has been brought about by the Ministry of Defence by any specific notification. Moreover, the said notification dated 20th December, 2021 cannot be used in the present case for review of an earlier decision as it was not brought on record at the time of hearing of OA, and was not produced before us with due diligence. Moreover, no sufficient cause has been made out before us by the applicants herein for review of the order passed by us.

8. Having considered the matter in its entirety and keeping in view the provisions of law as enshrined in the Code of Civil

Procedure, we are not inclined to entertain the present Review Application. The same is accordingly dismissed.

9. There will, however, no order as to costs.

Pronounced in open Court on this 15th day of November, 2022.

(ANJANA MISHRA)
MEMBER (J)

(P.M. HARIZ)
MEMBER (A)

/Neha/